

§ 40.32

tax, if the divisions of the premises are otherwise contiguous.

(d) *Payment of tax.* Special tax must be paid by return. The prescribed return is TTB Form 5630.5t, Special Tax Registration and Return—Tobacco. Special tax returns, with payment of tax, must be filed with TTB in accordance with the instructions on the form and the requirements of subpart D of part 46 of this chapter.

(26 U.S.C. 5731, 5733)

EFFECTIVE DATE NOTE: By T.D. TTB-79, 74 FR 37419, July 28, 2009, § 40.31 was amended by removing and reserving paragraph (b) and adding a new paragraph (d), effective July 28, 2009 through July 30, 2012.

§ 40.32 Rates of special tax.

(a) *General.* Title 26 U.S.C. 5731(a)(1) imposes a special tax of \$1,000 per year on every manufacturer of tobacco products.

(b) *Reduced rate for small proprietors.* Title 26 U.S.C. 5731(b) provides for a reduced rate of \$500 per year with respect to any manufacturer of tobacco products whose gross receipts (for the most recent taxable year ending before the first day of the taxable period to which the special tax imposed by § 40.31 relates) are less than \$500,000. The “taxable year” to be used for determining gross receipts is the taxpayer’s income tax year. All gross receipts of the taxpayer shall be included, not just the gross receipts of the business subject to special tax. Proprietors of new businesses that have not yet begun a taxable year, as well as proprietors of existing businesses that have not yet ended a taxable year, who commence a new activity subject to special tax, qualify for the reduced special (occupational) tax rate, unless the business is a member of a “controlled group”; in that case, the rules of paragraph (c) of this section shall apply.

(c) *Controlled group.* All persons treated as one taxpayer under 26 U.S.C. 5061(e)(3) shall be treated as one taxpayer for the purpose of determining gross receipts under paragraph (b) of this section. “Controlled group” means a controlled group of corporations, as defined in 26 U.S.C. 1563 and implementing regulations in 26 CFR 1.1563-1 through 1.1563-4, except that the words “at least 80 percent” shall be replaced

27 CFR Ch. I (4-1-10 Edition)

by the words “more than 50 percent” in each place they appear in subsection (a) of 26 U.S.C. 1563, as well as in the implementing regulations. Also, the rules for a “controlled group of corporations” apply in a similar fashion to groups which include partnerships and/or sole proprietorships. If one entity maintains more than 50% control over a group consisting of corporations and one, or more, partnerships and/or sole proprietorships, all of the members of the controlled group are one taxpayer for the purpose of this section.

(d) *Short taxable year.* Gross receipts for any taxable year of less than 12 months shall be annualized by multiplying the gross receipts for the short period by 12 and dividing the result by the number of months in the short period as required by 26 U.S.C. 448(c)(3).

(e) *Returns and allowances.* Gross receipts for any taxable year shall be reduced by returns and allowances made during such year under 26 U.S.C. 448(c)(3).

(26 U.S.C. 448, 5061, 5731)

§ 40.33 Cross reference.

For additional rules pertaining to liability for special tax, filing special tax returns, issuance and examination of special (occupational) tax stamps, and notification of changes to special tax stamps, see subpart D of part 46 of this chapter.

EFFECTIVE DATE NOTE: By T.D. TTB-79, 74 FR 37419, July 28, 2009, § 40.33 was revised, effective July 28, 2009 through July 30, 2012.

§§ 40.34–40.36 [Reserved]

Subpart D—Administrative Provisions

§ 40.41 Forms prescribed.

(a) The appropriate TTB officer is authorized to prescribe all forms required by this part. All of the information called for in each form shall be furnished as indicated by the headings on the form and the instructions on or pertaining to the form. In addition, information called for in each form shall be furnished as required by this part. When a return, form, claim, or other document called for under this part is